

HOUSE BILL No. 4430

March 8, 2007, Introduced by Rep. Lemmons and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520b, 520c, 520d, and 520e (MCL 750.520b,
750.520c, 750.520d, and 750.520e), section 520b as amended by 2006
PA 169, section 520c as amended by 2006 PA 171, and sections 520d
and 520e as amended by 2002 PA 714.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520b. (1) A person is guilty of criminal sexual conduct
2 in the first degree if he or she engages in sexual penetration with
3 another person and if any of the following circumstances exists:

4 (a) That other person is under 13 years of age.

5 (b) That other person is at least 13 but less than ~~16~~18 years
6 of age and any of the following:

7 (i) The actor is a member of the same household as the victim.

1 THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER PERSON IS EMANCIPATED
2 OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME
3 OF THE ALLEGED VIOLATION.

4 (ii) The actor is related to the victim by blood or affinity to
5 the fourth degree. THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER
6 PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO
7 EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.

8 (iii) The actor is in a position of authority over the victim
9 and used this authority to coerce the victim to submit.

10 (iv) The actor is a teacher, substitute teacher, or
11 administrator of the public or nonpublic school in which that other
12 person is enrolled. THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER
13 PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO
14 EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.

15 (c) Sexual penetration occurs under circumstances involving
16 the commission of any other felony.

17 (d) The actor is aided or abetted by 1 or more other persons
18 and either of the following circumstances exists:

19 (i) The actor knows or has reason to know that the victim is
20 mentally incapable, mentally incapacitated, or physically helpless.

21 (ii) The actor uses force or coercion to accomplish the sexual
22 penetration. Force or coercion includes, but is not limited to, any
23 of the circumstances listed in subdivision (f).

24 (e) The actor is armed with a weapon or any article used or
25 fashioned in a manner to lead the victim to reasonably believe it
26 to be a weapon.

27 (f) The actor causes personal injury to the victim and force

1 or coercion is used to accomplish sexual penetration. Force or
2 coercion includes, but is not limited to, any of the following
3 circumstances:

4 (i) When the actor overcomes the victim through the actual
5 application of physical force or physical violence.

6 (ii) When the actor coerces the victim to submit by threatening
7 to use force or violence on the victim, and the victim believes
8 that the actor has the present ability to execute these threats.

9 (iii) When the actor coerces the victim to submit by threatening
10 to retaliate in the future against the victim, or any other person,
11 and the victim believes that the actor has the ability to execute
12 this threat. As used in this subdivision, "to retaliate" includes
13 threats of physical punishment, kidnapping, or extortion.

14 (iv) When the actor engages in the medical treatment or
15 examination of the victim in a manner or for purposes that are
16 medically recognized as unethical or unacceptable.

17 (v) When the actor, through concealment or by the element of
18 surprise, is able to overcome the victim.

19 (g) The actor causes personal injury to the victim, and the
20 actor knows or has reason to know that the victim is mentally
21 incapable, mentally incapacitated, or physically helpless.

22 (h) That other person is mentally incapable, mentally
23 disabled, mentally incapacitated, or physically helpless, and any
24 of the following **APPLY**:

25 (i) The actor is related to the victim by blood or affinity to
26 the fourth degree.

27 (ii) The actor is in a position of authority over the victim

1 and used this authority to coerce the victim to submit.

2 (2) Criminal sexual conduct in the first degree is a felony
3 punishable as follows:

4 (a) Except as provided in subdivisions (b) and (c), by
5 imprisonment for life or for any term of years.

6 (b) For a violation that is committed by an individual 17
7 years of age or older against an individual less than 13 years of
8 age by imprisonment for life or any term of years, but not less
9 than 25 years.

10 (c) For a violation that is committed by an individual 17
11 years of age or older against an individual less than 13 years of
12 age, by imprisonment for life without the possibility of parole if
13 the person was previously convicted of a violation of this section
14 or section 520c, 520d, 520e, or 520g committed against an
15 individual less than 13 years of age or a violation of law of the
16 United States, another state or political subdivision substantially
17 corresponding to a violation of this section or section 520c, 520d,
18 520e, or 520g committed against an individual less than 13 years of
19 age.

20 (d) In addition to any other penalty imposed under subdivision
21 (a) or (b), the court shall sentence the defendant to lifetime
22 electronic monitoring under section 520n.

23 (3) The court may order a term of imprisonment imposed under
24 this section to be served consecutively to any term of imprisonment
25 imposed for any other criminal offense arising from the same
26 transaction.

27 Sec. 520c. (1) A person is guilty of criminal sexual conduct

1 in the second degree if the person engages in sexual contact with
2 another person and if any of the following circumstances exists:

3 (a) That other person is under 13 years of age.

4 (b) That other person is at least 13 but less than ~~16~~18 years
5 of age and any of the following:

6 (i) The actor is a member of the same household as the victim.

7 **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER PERSON IS EMANCIPATED**
8 **OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME**
9 **OF THE ALLEGED VIOLATION.**

10 (ii) The actor is related by blood or affinity to the fourth
11 degree to the victim. **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER**
12 **PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO**
13 **EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

14 (iii) The actor is in a position of authority over the victim
15 and the actor used this authority to coerce the victim to submit.

16 (iv) The actor is a teacher, substitute teacher, or
17 administrator of the public or nonpublic school in which that other
18 person is enrolled. **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER**
19 **PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO**
20 **EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

21 (c) Sexual contact occurs under circumstances involving the
22 commission of any other felony.

23 (d) The actor is aided or abetted by 1 or more other persons
24 and either of the following circumstances exists:

25 (i) The actor knows or has reason to know that the victim is
26 mentally incapable, mentally incapacitated, or physically helpless.

27 (ii) The actor uses force or coercion to accomplish the sexual

1 contact. Force or coercion includes, but is not limited to, any of
2 the circumstances listed in section 520b(1)(f).

3 (e) The actor is armed with a weapon, or any article used or
4 fashioned in a manner to lead a person to reasonably believe it to
5 be a weapon.

6 (f) The actor causes personal injury to the victim and force
7 or coercion is used to accomplish the sexual contact. Force or
8 coercion includes, but is not limited to, any of the circumstances
9 listed in section 520b(1)(f).

10 (g) The actor causes personal injury to the victim and the
11 actor knows or has reason to know that the victim is mentally
12 incapable, mentally incapacitated, or physically helpless.

13 (h) That other person is mentally incapable, mentally
14 disabled, mentally incapacitated, or physically helpless, and any
15 of the following:

16 (i) The actor is related to the victim by blood or affinity to
17 the fourth degree.

18 (ii) The actor is in a position of authority over the victim
19 and used this authority to coerce the victim to submit.

20 (i) That other person is under the jurisdiction of the
21 department of corrections and the actor is an employee or a
22 contractual employee of, or a volunteer with, the department of
23 corrections who knows that the other person is under the
24 jurisdiction of the department of corrections.

25 (j) That other person is under the jurisdiction of the
26 department of corrections and the actor is an employee or a
27 contractual employee of, or a volunteer with, a private vendor that

1 operates a youth correctional facility under section 20g of **THE**
2 **CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL 791.220g, who knows that
3 the other person is under the jurisdiction of the department of
4 corrections.

5 (k) That other person is a prisoner or probationer under the
6 jurisdiction of a county for purposes of imprisonment or a work
7 program or other probationary program and the actor is an employee
8 or a contractual employee of or a volunteer with the county or the
9 department of corrections who knows that the other person is under
10 the county's jurisdiction.

11 (l) The actor knows or has reason to know that a court has
12 detained the victim in a facility while the victim is awaiting a
13 trial or hearing, or committed the victim to a facility as a result
14 of the victim having been found responsible for committing an act
15 that would be a crime if committed by an adult, and the actor is an
16 employee or contractual employee of, or a volunteer with, the
17 facility in which the victim is detained or to which the victim was
18 committed.

19 (2) Criminal sexual conduct in the second degree is a felony
20 punishable as follows:

21 (a) By imprisonment for not more than 15 years.

22 (b) In addition to the penalty specified in subdivision (a),
23 the court shall sentence the defendant to lifetime electronic
24 monitoring under section 520n if the violation involved sexual
25 contact committed by an individual 17 years of age or older against
26 an individual less than 13 years of age.

27 Sec. 520d. (1) A person is guilty of criminal sexual conduct

1 in the third degree if the person engages in sexual penetration
2 with another person and if any of the following circumstances
3 exist:

4 (a) That other person is at least 13 years of age ~~and under 16~~
5 **BUT LESS THAN 18** years of age. **THIS SUBDIVISION DOES NOT APPLY IF**
6 **THE OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY**
7 **MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

8 (b) Force or coercion is used to accomplish the sexual
9 penetration. Force or coercion includes but is not limited to any
10 of the circumstances listed in section 520b(1)(f)(i) to (v).

11 (c) The actor knows or has reason to know that the victim is
12 mentally incapable, mentally incapacitated, or physically helpless.

13 (d) That other person is related to the actor by blood or
14 affinity to the third degree and the sexual penetration occurs
15 under circumstances not otherwise prohibited by this chapter. It is
16 an affirmative defense to a prosecution under this subdivision that
17 the other person was in a position of authority over the defendant
18 and used this authority to coerce the defendant to violate this
19 subdivision. The defendant has the burden of proving this defense
20 by a preponderance of the evidence. This subdivision does not apply
21 if both persons are lawfully married to each other at the time of
22 the alleged violation.

23 (e) That other person is at least 16 years of age but less
24 than 18 years of age and a student at a public or nonpublic school,
25 and the actor is a teacher, substitute teacher, or administrator of
26 that public or nonpublic school. This subdivision does not apply if
27 the other person is emancipated or if both persons are lawfully

1 married to each other at the time of the alleged violation.

2 (2) Criminal sexual conduct in the third degree is a felony
3 punishable by imprisonment for not more than 15 years.

4 Sec. 520e. (1) A person is guilty of criminal sexual conduct
5 in the fourth degree if he or she engages in sexual contact with
6 another person and if any of the following circumstances exist:

7 (a) That other person is at least 13 years of age but less
8 than ~~16~~18 years of age, and the actor is 5 or more years older
9 than that other person. **THIS SUBDIVISION DOES NOT APPLY IF THE**
10 **OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED**
11 **TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

12 (b) Force or coercion is used to accomplish the sexual
13 contact. Force or coercion includes, but is not limited to, any of
14 the following circumstances:

15 (i) When the actor overcomes the victim through the actual
16 application of physical force or physical violence.

17 (ii) When the actor coerces the victim to submit by threatening
18 to use force or violence on the victim, and the victim believes
19 that the actor has the present ability to execute that threat.

20 (iii) When the actor coerces the victim to submit by threatening
21 to retaliate in the future against the victim, or any other person,
22 and the victim believes that the actor has the ability to execute
23 that threat. As used in this subparagraph, "to retaliate" includes
24 threats of physical punishment, kidnapping, or extortion.

25 (iv) When the actor engages in the medical treatment or
26 examination of the victim in a manner or for purposes which are
27 medically recognized as unethical or unacceptable.

1 (v) When the actor achieves the sexual contact through
2 concealment or by the element of surprise.

3 (c) The actor knows or has reason to know that the victim is
4 mentally incapable, mentally incapacitated, or physically helpless.

5 (d) That other person is related to the actor by blood or
6 affinity to the third degree and the sexual contact occurs under
7 circumstances not otherwise prohibited by this chapter. It is an
8 affirmative defense to a prosecution under this subdivision that
9 the other person was in a position of authority over the defendant
10 and used this authority to coerce the defendant to violate this
11 subdivision. The defendant has the burden of proving this defense
12 by a preponderance of the evidence. This subdivision does not apply
13 if both persons are lawfully married to each other at the time of
14 the alleged violation.

15 (e) The actor is a mental health professional and the sexual
16 contact occurs during or within 2 years after the period in which
17 the victim is his or her client or patient and not his or her
18 spouse. The consent of the victim is not a defense to a prosecution
19 under this subdivision. A prosecution under this subsection shall
20 not be used as evidence that the victim is mentally incompetent.

21 (f) That other person is at least 16 years of age but less
22 than 18 years of age and a student at a public or nonpublic school,
23 and the actor is a teacher, substitute teacher, or administrator of
24 that public or nonpublic school. This subdivision does not apply if
25 the other person is emancipated or if both persons are lawfully
26 married to each other at the time of the alleged violation.

27 (2) Criminal sexual conduct in the fourth degree is a

- 1 misdemeanor punishable by imprisonment for not more than 2 years or
- 2 a fine of not more than \$500.00, or both.